

**BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for)
Penalty Reduction of:)
LAXMINARAYAN GUJARATHI, M.D.)
Certificate #A-38401)
Petitioner.)

File No.: 08-90-3405
OAH No.: L-9508001

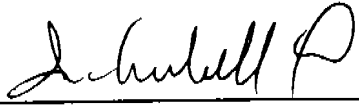
DECISION

The attached Proposed Decision in the Matter of the Petition for Penalty Reduction is hereby adopted by the Division of Medical Quality of the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on January 8, 1996.

DATED December 8, 1995.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



Ira Lubell, M.D.

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for)	
Termination of Probation of:)	OAH No. L-9508001
LAXMINARAYAN GUJARATHI)	
Petitioner.)	
_____)	

PROPOSED DECISION

On September 20, 1995, in San Diego, California, Joyce A. Wharton, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Beth Faber Jacobs, Deputy Attorney General, represented the Attorney General of the State of California.

Petitioner, Laxminarayan Gujarathi, M.D., appeared on his own behalf.

Evidence was received, the record was closed and the matter was submitted. On October 16, 1995, petitioner, through James F. Tritt, Attorney at Law, filed a request to reopen the record for the limited purpose of receiving written argument on two issues. The Attorney General was given opportunity to file written objection to the request and did so on October 27, 1995. The record was reopened for receipt of Mr. Tritt's letters dated October 12, 1995, which were marked Exhibits A and B, and Ms. Jacobs letter was marked Exhibit 6. The responding letter of the Administrative Law Judge was marked Exhibit 7. On November 9, 1995, the record was again closed and the matter submitted.

FINDINGS OF FACT

I

On about April 24, 1995, Laxminarayan Gujarathi, M.D. (petitioner) filed a Petition for Termination of Probation with the Division of Medical Quality, Medical Board of California (Board). He seeks termination of a five year probation which was ordered by the Board, effective April 18, 1993.

II

HISTORY OF DISCIPLINE

Petitioner received his medical education in India. In 1962 he completed a residency program at a New Jersey medical center. He was first licensed to practice medicine in California on May 10, 1982, and commenced a private practice specializing in obstetrics and gynecology. In June, 1991, Accusation No. D-4545 was filed charging petitioner with three instances of unprofessional conduct in 1987 during the care of obstetrics patients.

In July, 1992, a full day of hearing on the Accusation was held before an administrative law judge. Respondent was present and represented by an attorney. The second day of hearing did not commence until November 8, 1992, at which time respondent was again present and represented by his attorney. Before the matter reconvened for the taking of evidence, complainant and petitioner reached a stipulated settlement of the matter and entered the terms and conditions into the record. Based on the stipulation, petitioner, through and with the consent of his attorney, waived the right to further hearing on the matter, subject to the Board's approval of the settlement terms. On December 14, 1992 the administrative law judge issued a Proposed Decision based solely on the factual and legal stipulations of the parties. On March 19, 1993, the Board adopted the decision, making it effective on April 18, 1993. Thereafter, petitioner filed a Writ of Mandamus in the Superior Court of the County of Sacramento challenging the Board's disciplinary action. The matter was heard in February, 1994, and a judgment was issued in October, 1994, granting the petition in part, to wit, striking portions of the Board's probationary conditions numbers 10 and 12. However, the court also found that the administrative findings were supported by the evidence and the penalty imposed was not an abuse of discretion. Petitioner is continuing to challenge the decision in the Court of Appeal.

III

THE UNPROFESSIONAL CONDUCT

The discipline of petitioner's license was founded on three instances of unprofessional conduct in 1987. Petitioner departed from the standard of care in making operative reports and chart notes for two patients in that he failed to adequately or accurately describe his treatment procedures and observations. Respondent was also deemed incompetent in the evaluation and management of one patient because he performed a caesarean section delivery "based upon faulty reasoning and without a prior attempt at stimulation of labor".

IV

COMPLIANCE WITH PROBATION

Petitioner has completed two and one-half years of his five year probation. He has been in compliance with all standard and special terms of probation: he completed the required ethics course in May, 1993; in August, 1993, he passed the oral competency examination in OB/GYN; he has taken the required additional hours of CME courses each year; he meets weekly with his practice monitor; and he has filed the required quarterly reports. There is no evidence of any subsequent violations of the Medical Practice Act.

V

REHABILITATION AND PROFESSIONAL REPUTATION

Petitioner's record keeping skills have greatly improved and physicians who work with him in the delivery room find him to be a competent and very careful surgeon who demonstrates good clinical judgment and technique. Petitioner has been more careful to seek consultation on difficult cases and refers patients to other physicians when appropriate. Petitioner's case monitor, Dr. Nadir Bakar, observes that he is competent in the management of his cases, including several involving serious complications. In each case respondent made a timely diagnosis, managed the case properly and had a good result. Dr. Bakar feels there is no need for further monitoring.

Respondent has taken his probationary conditions seriously, complying in a very timely manner with the terms meant to assure his competence.

VI

A matter of concern is petitioner's continuing refusal to acknowledge any lack of competence in his handling of the caesarean section. He continues to assert that it was a judgement call and he did nothing wrong, that his only problem was transcription errors. This is bothersome because the findings in the Board's decision were based only on facts to which petitioner stipulated, with advice of counsel, after a full day of hearing.

Petitioner contends he was pressured by his attorney to enter the stipulation and did so when he was extremely anxious and had "lost his understanding capacity". This scenario is not supported by any of the evidence presented at this petition hearing. Even if petitioner had failed to comprehend the events of November 8, 1992, he had four months to set aside the stipulation before it was adopted by the Board on March 19, 1993.

Petitioner presents no evidence of any attempt to seek relief from the administrative law judge before the proposed decision was issued on December 14, 1992, nor does reveal any efforts to seek reconsideration by the Board before its final action. There is nothing in the record in this proceeding to show the grounds on which he seeks a Writ of Mandamus.

VII

The Attorney General raised the issue of petitioner's lack of candor in answering two pertinent questions on the Petition for Termination of Probation form. At page 2 of the form, in the section which states "CURRENTLY LICENSED IN OTHER STATES OR COUNTRIES - LIST THEM", petitioner listed "New Jersey". Also at page 2 is the following question:

"SINCE THE EFFECTIVE DATE OF YOUR LATEST MBC
DISCIPLINARY DECISION, HAVE YOU BEEN INVOLVED IN ANY OF THE
FOLLOWING SITUATIONS?

. . .

(D) CHARGED OR DISCIPLINED BY ANY MEDICAL BOARD?

Petitioner answered "NO" to this question.

In 1981, petitioner was licensed to practice medicine in New Jersey. The license was suspended due to his failure to remit biennial registration fees after June 30, 1987. On June 3, 1994, the New Jersey State Board of Medical Examiners (hereinafter "New Jersey Board") issued a Provisional Order of discipline on petitioner's medical license based on the action of the California Board. The order suspended the New Jersey license, stayed the suspension and ordered a period of probation until petitioner has complied with all terms and conditions imposed by the California Board. The Provisional Order was to become final within 30 business days unless petitioner followed certain procedures to request a modification or dismissal of the order.

On June 16, 1994, petitioner requested modification and/or dismissal of the Provisional Order, asserting as follows:

1. The action of the California Board was the result of an invalid stipulation "coerced and pressured by my former attorney at the time of hearing".

2. Petitioner was in the process of challenging the California Board's discipline and was awaiting judgement from the Sacramento Superior Court.

3. ". . . No judge or tribunal has ever found me guilty of anything, let alone unprofessional conduct. . . None of the charges have ever been tried to a finder of fact, and I have never been found guilty by any finder of fact."

No further action was taken by the New Jersey Board pending further notification of the status of petitioner's appeal of the California Board's discipline. The official status of petitioner's New Jersey medical license is that it remains suspended due to non-payment of registration fees.

VIII

Petitioner's answer on his petition form that he is "currently" licensed in New Jersey is not a totally inaccurate statement. The license has never been revoked and is in a state of suspension only due to non-payment of biennial fees. It continues to exist though in a state of suspension or inactivity. There is no evidence to indicate what petitioner must do to reactivate or reinstate the license. Petitioner's answer is not deemed false or misleading in any significant sense.

IX

At hearing and in Mr. Tritt's letter petitioner contends he answered "No" to the second question, and continues to believe it is the correct answer, because the only basis for the New Jersey order was the California discipline and not any medical practice he performed in New Jersey. Petitioner is either disingenuous or extremely misguided. His argument presented in Mr. Tritt's letter was considered. It is not persuasive. The language of the question is clear, unambiguous, and seeks information very relevant to the petition proceeding. There is nothing in the question to imply it relates only to "independent charges arising in other jurisdictions". When in doubt about the meaning of a question, especially in a matter as important as this petition to terminate probation, the prudent course of action is to make further inquiry to determine what information is sought. A phone call to petitioner's probation supervisor should have resolved any ambiguity perceived in the question.

X

Petitioner will be given the benefit of the doubt, that in failing to reveal the New Jersey Board's charges he did not intend to deceive the Board but was merely careless. Nevertheless, this carelessness in an important professional endeavor reflects a continuation of the very basic problems which led to the 1993 discipline. It may not always be necessary for the disciplined physician to acknowledge "wrongdoing" in order to

establish sufficient rehabilitation. However, petitioner's persistent refusal to acknowledge either the apparently valid findings of the Board or his own responsibility for the stipulated decision and discipline weigh against him in this petition. Petitioner has not met his burden of establishing cause to grant an early termination of probation at this time.

DETERMINATION OF ISSUES

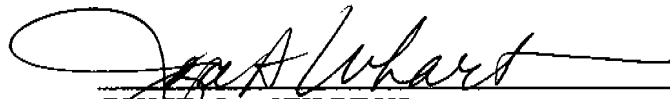
I

Cause was not established pursuant to Business and Professions Code section 2313 to grant petitioner's request for termination of probation, by reason of Findings II through X.

ORDER

The petition for termination of probation is denied.

Dated: November 13, 1995



JOYCE A. WHARTON
Administrative Law Judge
Office of Administrative Hearings